

AMENDED IN SENATE MAY 31, 2007

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1153

Introduced by Assembly Member Garcia

February 23, 2007

An act to amend ~~Section 18050~~ *Sections 18050 and 18070.3* of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1153, as amended, Garcia. Mobilehome dealers: occupational licensing.

The Mobilehomes-Manufactured Housing Act of 1980 makes it unlawful for a person to act as a manufacturer, distributor, dealer, or seller of mobilehomes, manufactured homes, or commercial coaches, as defined, without an appropriate occupational license or temporary permit issued by the Department of Housing and Community Development.

This bill would require every applicant for these occupational licenses to submit fingerprints, as specified, *and would make a conforming change*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18050 of the Health and Safety Code is
2 amended to read:

1 18050. (a) Every applicant for an occupational license shall
2 make application to the department for a license containing a
3 general distinguishing number.

4 (b) The applicant shall submit all information as may be
5 reasonably required by the department in carrying out the
6 provisions of this chapter, including, but not limited to, proof of
7 successful completion within the previous six months of the
8 appropriate department examination and proof of his or her status
9 as a bona fide manufacturer, distributor, dealer, dealer branch, or
10 salesperson.

11 (c) The applicant shall submit an application to the department
12 on the forms prescribed by the department. The applicant shall
13 provide the department with information as to the applicant's
14 character, honesty, integrity, and reputation, as the department
15 may consider necessary. The department, by regulation, shall
16 prescribe what information is required of the applicant for the
17 purposes of this subdivision.

18 (d) The applicant shall submit fingerprints in the format required
19 by the department to be used for the purpose of a criminal history
20 records check of the applicant by state and federal law enforcement
21 authorities, including, but not limited to, the Federal Bureau of
22 Investigation. Results of any records checked by federal law
23 enforcement authorities shall not be released except in accordance
24 with federal requirements.

25 (e) Upon receipt of a complete application for a license that is
26 accompanied by the appropriate fee, the department shall, within
27 120 days, make a thorough investigation of the information
28 contained in the application.

29 *SEC. 2. Section 18070.3 of the Health and Safety Code is*
30 *amended to read:*

31 18070.3. (a) When any person (1) who has purchased a
32 manufactured home for a personal or family residential or
33 investment purpose or (2) who has sold a manufactured home for
34 a personal or family residential or investment purpose, obtains a
35 final judgment against any manufactured home manufacturer,
36 manufactured home dealer or salesperson, or other seller or
37 purchaser, and the judgment is based on the grounds of (1) failure
38 to honor warranties or guarantees, (2) fraud or willful
39 misrepresentation related to any financial provision, (3) fraud or
40 willful misrepresentation of the kind or quality of the product sold

1 or purchased, (4) conversion, (5) any willful violation of any other
2 provision of this part, including the provisions regulating escrow
3 accounts, or regulations adopted pursuant to this part, or (6)
4 violation of Chapter 3 (commencing with Section 1797) of Title
5 1.7 of Part 4 of Division 3 of the Civil Code, resulting in an actual
6 and direct loss directly arising out of any transaction that occurs
7 on or after January 1, 1985, the person, upon termination of all
8 proceedings, including appeals, may file a claim with the
9 department for an order directing payment out of the fund for the
10 amount of actual and direct loss in the transaction.

11 (b) If any person either purchases a manufactured home used
12 for a personal or family residential or investment purpose from,
13 or sells a manufactured home used for a personal or family
14 residential or investment purpose to, a person or entity who is or
15 has been the subject of a bankruptcy proceeding, the person may
16 file a claim with the department for an order directing payment
17 out of the fund for the actual and direct loss in the transaction based
18 on (1) the failure to honor warranties or guarantees, (2) fraud or
19 willful misrepresentation related to any financial provision, (3)
20 fraud or willful misrepresentation of the kind or quality of product
21 purchased or sold, (4) conversion, (5) willful violation of any other
22 provision in this part, including the provisions regulating escrow
23 accounts, or (6) violation of Chapter 3 (commencing with Section
24 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code,
25 resulting in an actual and direct loss directly arising out of any
26 transaction that occurs on or after January 1, 1985.

27 (c) (1) The total amount of the claim shall not exceed the
28 amount of actual and direct loss that remains unreimbursed from
29 any source.

30 (2) The maximum payment ordered under this section, with
31 respect to any one sales transaction on a new or used manufactured
32 home, shall be the amount of the actual and direct loss, as
33 determined by the department based on information in the
34 possession of the department and information provided by the
35 claimant or claimants. In no event shall the actual payment relating
36 to a single transaction exceed seventy-five thousand dollars
37 (\$75,000).

38 (3) Notwithstanding any other provision of this chapter, a person
39 who purchases or sells a manufactured home for an investment
40 purpose may receive payment from the fund for that purpose only

1 once. A person who has received payment from the fund for the
2 purchase or sale of a manufactured home for an investment purpose
3 shall henceforth be ineligible to make a claim under this chapter,
4 either as a natural person or as a member of a partnership, as an
5 officer or director of a corporation, as a member of a marital
6 community, or in any other capacity.

7 (d) Prior to payment of any claim against the fund, the claimant
8 or claimants shall have first:

9 (1) If the claim is based on a final judgment, diligently pursued
10 collection efforts against all the assets of the judgment debtor, or
11 presented evidence satisfactory to the department that the debtor
12 is judgment proof, or demonstrated evidence satisfactory to the
13 department that the costs of collection are likely to be in excess
14 of the amounts that could be collected. This evidence may include,
15 but is not limited to, a description of the searches and inquiries
16 conducted by or on behalf of the claimant with respect to the
17 judgment debtor's assets liable to be sold or applied to the
18 satisfaction of the judgment, an itemized valuation of the assets
19 discovered, and the results of actions by the claimant to have assets
20 applied to satisfy the judgment.

21 (2) If the claim is not based on a final judgment, presented
22 evidence satisfactory to the department of either of the following:

23 (A) That the ~~licensee~~ *person or entity* is or has been the subject
24 of bankruptcy proceedings and, for purposes of any civil litigation
25 or claims in bankruptcy proceedings, has assigned to the
26 department any interest in the actual and direct loss described in
27 subdivision (c) in the amount that the claimant or claimants recover
28 from the fund.

29 (B) That the claimant's claim is consistent with this chapter and
30 the claimant had presented evidence satisfactory to the department
31 that the debtor is judgment proof, or demonstrated evidence
32 satisfactory to the department that the costs of collection are likely
33 to be in excess of the amounts that could be collected. This
34 evidence may include, but not be limited to, a description of
35 searches and inquiries conducted by or on behalf of the claimant
36 with respect to the judgment debtor's assets eligible to be sold or
37 applied to the satisfaction of the judgment, an itemized valuation
38 of the assets discovered, and the results of actions by the claimant
39 to have the assets applied to satisfaction of the judgment.

1 (3) If the claim is based upon a violation of a provision within
2 a warranty provided pursuant to Chapter 3 (commencing with
3 Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code,
4 demonstrated evidence satisfactory to the department that the
5 claimant has been denied full compensation or correction under
6 the warranty after the claimant has attempted to exercise his or her
7 rights pursuant to the warranty.

8 (e) A claim against the fund shall be filed with the department
9 within the following time periods:

10 (1) If the claim is based on a final judgment, within two years
11 from the date of the judgment.

12 (2) If the claim is not based on a final judgment, within two
13 years from the termination of bankruptcy proceedings or two years
14 from the date of sale as determined by subdivision (a) of Section
15 18070.2, or within two years of discovery of the violations causing
16 actual and direct losses pursuant to this article but no longer than
17 five years after the date of sale as determined by subdivision (a)
18 of Section 18070.2, whichever event occurs later.

19 (f) When any person files a claim for an order directing payment
20 from the fund, the claimant shall mail, by first-class mail, a copy
21 of that claim to the last known address of the judgment debtor.
22 The department shall conduct a review of the application and other
23 pertinent information in its possession, and it may issue an order
24 directing payment out of the fund as provided in subdivisions (a)
25 to (e), inclusive, subject to the limitations of subdivisions (a) to
26 (e), inclusive, if the claimant or claimants show all of the following:

27 (1) That he or she is not a spouse of the judgment debtor, the
28 bankrupt-~~licensee~~ *person or entity*, or a person representing the
29 spouse.

30 (2) That he or she is making an application within the time
31 specified in subdivision (e).

32 (3) That the claimant has satisfied the applicable requirements
33 of subdivision (d).

34 (4) That, if the claimant is a seller of a manufactured home used
35 by the seller for personal, family, or household purposes, the
36 claimant made a good faith effort to adequately secure the debt
37 resulting from the sale of the manufactured home and with respect
38 to which the claim is made. For purposes of this paragraph, a good
39 faith effort to secure the debt may be demonstrated by, but shall
40 not be limited to, providing the department with a promissory note

1 signed by the debtor and which, pursuant to the terms thereof, is
2 secured by collateral with a reasonable value at least equal to the
3 debt evidenced by the promissory note.

4 (g) Upon an order of the department directing that payment be
5 made out of the fund, the Controller is authorized to draw a warrant
6 for the payment of the amount of the claim approved by the
7 department pursuant to this section.

8 (h) In dispersing moneys from the fund, the department is
9 authorized to give priority to claimants who have attempted to
10 purchase or sell a manufactured home for a personal or family
11 residential purpose.

12 (i) All claims to the fund that are received on or after January
13 1, 1993, shall be processed, and a determination made, within one
14 year of submission of a properly completed application.

15 (j) The department, upon request by a Member of the
16 Legislature, shall provide the following information: the number
17 of claims to the fund, number of claims processed and decided
18 within one year of their application date and submission of a
19 properly completed application, the amount of fund money paid
20 to claimants, and the amount of fund money allocated for the
21 department's costs.